

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 137064 through N MC 137070.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a copy of the location notice and a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976, or those in 43 CFR 3833.2.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself.

A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive the requirements of the Act, or to afford claimant any relief from the statutory consequences.

APPEARANCES: Dan Walker, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Dan Walker has appealed the Nevada State Office, Bureau of Land Management (BLM), decision of February 18, 1983, which declared the unpatented White Swan Nos. 1 through 7 placer mining claims, N MC 137064 through N MC 137070, abandoned and void because no proof of labor was filed with BLM on or before October 22, 1979, 1/ as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. 2/

Appellant states his first involvement with the White Swan claims was in 1978. He thought that his letter to BLM in 1979 was adequate to show his intention to hold the claims. He asserts the annual assessment work has been performed every year, and evidence of the work has been filed with BLM every year except 1979.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located on or before October 21, 1976, must file a copy of the official record of the location notice and a notice of intention to hold the claim or evidence of the performance of assessment work on the claim in the proper office of BLM on or before October 22, 1979, and a notice of intention to hold or evidence of assessment work on or before December 30 of every calendar year thereafter. This statutory requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980). The responsibility for complying with the recordation requirements rested with appellant. Those who deal with the Government are presumed to have knowledge of the law and regulations duly promulgated thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976). The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, supra.

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1/ The BLM decision indicated Dec. 30, 1979, as the critical date. This was error, as the statute states that the filing shall be made within 3 years after the date of the Act, which was Oct. 21, 1976.

2/ We note that the copies of the location notices for the subject claims were not submitted to BLM until Feb. 10, 1983. The location notices show that the claims were located in September 1970. Failure to file the location with BLM before Oct. 22, 1979, constitutes an independent reason for considering the claims to be abandoned under FLPMA. 43 CFR 3833.1-2(a), 43 CFR 3833.4.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining Co. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, supra at 196, 88 I.D. at 371-72.

Appellant may wish to confer with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

R. W. Mullen  
Administrative Judge

Will A. Irwin  
Administrative Judge